

STATE OF MICHIGAN
COURT OF APPEALS

DON SOMMER and DON SOMMER LLC,

Plaintiffs-Appellants,

v

ROBERT W. MAYER,

Defendant-Appellee.

UNPUBLISHED

June 13, 2006

No. 266390

Oakland Circuit Court

LC No. 2004-062932-CZ

Before: Smolenski, P.J., and Hoekstra and Murray, JJ.

PER CURIAM.

In this dispute arising out of a commercial lease, plaintiff¹ appeals as of right the trial court's grant of summary disposition in favor of defendant. Plaintiff also appeals the trial court's imposition of sanctions pursuant to MCR 2.114(E). We affirm.

I. Facts and Procedural History

At some point in 2002, defendant agreed to lease a pole barn to plaintiff for a period of five years. Pursuant to the lease, plaintiff had the option to purchase the leased premises during the term of the lease. Plaintiff used the pole barn to store automobiles and auto-parts. More than two years after the parties entered into the lease agreement, defendant informed plaintiff by letter that the storage of automobiles in the pole barn was prohibited pursuant to local zoning ordinances and, consequently, a violation of the terms of the lease. Defendant gave plaintiff thirty days to cease storing vehicles on the property. When plaintiff failed to meet defendant's demand, defendant filed a complaint seeking possession of the property through summary proceedings. See MCL 600.5701 *et seq.* On November 8, 2004, the district court terminated the lease and entered judgment in favor of defendant.²

¹ For ease of reference, we shall use plaintiff to refer to both Don Sommer and Don Sommer LLC.

² On March 9, 2005, the circuit court denied plaintiff's application for leave to appeal. Plaintiff also applied for leave to appeal to this Court, but his appeal was denied for lack of merit. See *Mayer v Don Sommer, LLC*, unpublished order of the Court of Appeals, entered November 29, (continued...)

On December 10, 2004, plaintiff commenced the present suit. On February 26, 2005, the trial court issued a scheduling order. Pursuant to the scheduling order, all dispositive and motions in limine were to be heard by August 29, 2005, which was also the date set for the pretrial conference.

On March 18, 2005, defendant moved for summary disposition of plaintiff's claims under MCR 2.116(C)(7). Defendant argued that summary disposition was appropriate because plaintiff's claims were either actually litigated before the district court during the eviction proceeding or could have been and, therefore, were barred by the doctrine of res judicata. In an order issued on March 24, 2005, the trial court ordered plaintiff to respond to defendant's motion by June 8, 2005.

In late May 2005, plaintiff asked defendant for additional time to file his response to defendant's motion for summary disposition. On June 1, 2005, defendant responded by mailing plaintiff a stipulation to extend the deadline to June 20, 2005. In his accompanying letter, defendant noted that there was no assurance that the trial court would approve the stipulation. On June 8, 2005, plaintiff returned the signed stipulation to defendant, who then filed it with the court. The court approved the stipulation on June 13, 2005. However, plaintiff stated that he did not receive notice of the court's approval until June 20, 2005, and, as a result, was not able to meet the deadline.

On June 29, 2005, plaintiff filed a response to defendant's motion.³ On the same day, plaintiff moved for an extension to file a response. In the motion, plaintiff claimed that defendant's trial counsel led him to believe that he would have more time to file his response. Likewise, in a response to defendant's answer to plaintiff's motion, plaintiff accused defendant's trial counsel of engaging in misconduct for the purpose of causing plaintiff's counsel to miss the response deadline.⁴

At a hearing held on July 27, 2005, the trial court determined that a good cause hearing should be held to consider plaintiff's motion for an extension. The trial court set the hearing for August 17, 2005. On August 1, 2005, plaintiff moved to adjourn the hearing, which was adjourned to September 7, 2005.

Thereafter, plaintiff failed to appear for the August 29, 2005, pretrial conference. As a result, the trial court dismissed plaintiff's case. On September 1, 2005, plaintiff filed a motion to reinstate his case. After some negotiations, the parties stipulated to the reinstatement of plaintiff's case. On September 16, 2005, the trial court issued an order reinstating plaintiff's case pursuant to the stipulation. The trial court also ordered the good cause hearing to be rescheduled for October 5, 2005.

(...continued)

2005 (Docket No. 263432).

³ In an order dated June 30, 2005, the trial court struck plaintiff's response as untimely.

⁴ Plaintiff's primary complaints were that defendant's trial counsel initiated settlement negotiations in bad faith, delayed discovery and deliberately led plaintiff's trial counsel to believe that defendant would agree to further extensions.

At the October 5, 2005 good cause hearing, plaintiff continued to assert that defendant's trial counsel's conduct caused him to miss the deadline set for a response to defendant's motion for summary disposition. However, plaintiff's counsel offered no evidence other than an affidavit, which the court rejected, to support his accusations. In contrast, defendant's trial counsel testified concerning the events leading up to the good cause hearing and stated that he did not mislead plaintiff's counsel in any way.

On October 6, 2005, the trial court issued a written opinion and order. In its opinion, the trial court found that plaintiff's accusations against defendant's trial counsel were not credible and were unsupported by admissible evidence. In contrast, the trial court found defendant's trial counsel's testimony to be credible. For that reason, the trial court found that plaintiff had not demonstrated good cause for an extension and, therefore, denied his motion. In addition, the trial court found that plaintiff's trial counsel's conduct in connection with the motion warranted sanction under MCR 2.114(E). Consequently, the trial court awarded defendant \$5,600 in attorney fees as a sanction against plaintiff and his trial counsel jointly and severally.

On October 12, 2005, the trial court granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(7). The trial court also denied plaintiff's motions for rehearing and reconsideration. Finally, on November 2, 2005, the trial court entered judgment of no cause of action in favor of defendant. This appeal followed.

II. Res Judicata

Plaintiff first argues on appeal that the trial court erred when it determined that plaintiff's claims were barred by res judicata. Therefore, plaintiff concludes, defendant was not entitled to summary disposition on this basis. We disagree.

This Court reviews de novo whether summary disposition was appropriately granted pursuant to MCR 2.116(C)(7). *Fane v Detroit Library Comm*, 465 Mich 68, 74; 631 NW2d 678 (2001). A party may support a motion brought under MCR 2.116(C)(7) with affidavits, depositions, admissions or other documentary evidence, which, if submitted, must be considered by this Court. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). This Court also reviews de novo whether res judicata bars a subsequent action. *Adair v Michigan*, 470 Mich 105, 119; 680 NW2d 386 (2004).

The doctrine of res judicata bars a subsequent action between the same parties when the evidence or essential facts are identical. *Dart v Dart*, 460 Mich 573, 586; 597 NW2d 82 (1999). A second action will be barred by res judicata when "(1) the first action was decided on the merits, (2) the matter contested in the second action was or could have been resolved in the first, and (3) both actions involve the same parties or their privies." *Id.* The doctrine is broadly applied and will preclude, not only claims that were actually litigated, but every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not. *Id.* The burden of proving the applicability of the doctrine is on the party asserting it. *Baraga Co v State Tax Comm*, 466 Mich 264, 269; 645 NW2d 13 (2002).

There is no dispute that the summary proceedings were decided on the merits or that the present action involves the same parties. The only question is whether the matters raised in

plaintiff's subsequent action were actually litigated or could reasonably have been raised in the previous action.

Although the doctrine of res judicata will normally operate to bar those claims that a party exercising reasonable diligence could have raised, there is a statutory exception where the previous litigation involved summary proceedings for possession of property. *JAM Corp v AARO Disposal, Inc*, 461 Mich 161; 600 NW2d 617 (1999).

In *JAM Corp*, the plaintiff had previously brought a summary proceeding to evict the defendant. During that proceeding the district court determined that the lease was void and dismissed the summary proceeding with prejudice. Thereafter, plaintiff filed a complaint in circuit court alleging six different claims. Four of the claims were based on the lease agreement. In addition, the plaintiff alleged claims based on implied contract and unjust enrichment. The circuit court found the earlier judgment to be res judicata and dismissed the complaint with prejudice, which was affirmed by the Court of Appeals. *Id.* at 162-166.

In examining the applicability of res judicata to summary proceedings, the Court in *JAM Corp* noted that the statute governing summary proceedings indicates a clear legislative intent that summary proceedings for possession of property be handled expeditiously. *Id.* at 168. The Court explained, “[p]lainly the Legislature took these cases outside the realm of the normal rules concerning merger and bar in order that attorneys would not be obliged to fasten all other pending claims to the swiftly moving summary proceedings.” *Id.* at 168-169. Based on the language of MCL 600.5750, the Court concluded that “it is evident that judgment in these summary proceedings, no matter who prevails, does not bar other claims for relief.” *Id.* at 170.

In *Sewell v Clean Cut Mgmt, Inc*, 463 Mich 569; 621 NW2d 222 (2001), our Supreme Court again addressed the applicability of res judicata to summary proceedings. The Court noted that its decision in *JAM Corp*, *supra* had recognized a statutory exception to res judicata with respect to claims that could have been litigated in a prior proceeding. However, the court clarified that,

Our decision in *JAM Corp* said nothing about the preclusive effect of claims actually litigated in the summary proceedings. Thus, the “other claims of relief,” described in *JAM Corp* at 170, were those claims that “could have been” brought during the summary proceedings, but were not. This Court was not describing subsequent claims involving the issues actually litigated in the summary proceedings. [*Id.* at 576.]

The Court went on to state that the limited statutory exception of *JAM Corp* does not apply to issues actually litigated in the summary proceeding. *Id.* at 577. Therefore, because the present case involves the preclusive effect of a summary proceeding, the doctrine of res judicata only properly applies to those issues actually litigated during the summary proceeding.

In his complaint, plaintiff alleged that defendant breached the lease agreement, raised claims of negligent and fraudulent misrepresentation and claimed that defendant should be estopped from asserting that plaintiff had violated the lease by storing automobiles in the pole barn. Based on these claims, plaintiff asked the trial court to declare that the lease was

wrongfully terminated and award plaintiff the lost profits from the sale of the property as well as punitive damages and damages for the costs associated with relocating.

Plaintiff's breach of contract and estoppel claims both concern the validity of the eviction proceedings commenced by defendant. Hence, they clearly involve the same matters actually litigated by the district court. See *Sewell, supra* at 576-577 (holding that the district court's judgment in a summary eviction proceeding is conclusive on the narrow issue whether the eviction was proper). Further, in pleadings submitted along with plaintiff's answer in the summary proceeding, plaintiff alleged that defendant's complaint for eviction was commenced in bad faith and should be denied based on the doctrines of waiver and estoppel. Specifically, plaintiff stated defendant had previously made similar use of the pole barn and knew how plaintiff intended to use the pole barn, but failed to warn plaintiff or make a specific prohibition of that use. Hence, plaintiff essentially placed the issue of misrepresentation before the district court. Finally, in an affidavit submitted in support of defendant's motion for summary disposition in this case, defendant's trial counsel averred that, during the summary proceeding trial, plaintiff raised and argued the same issues that were alleged in his complaint before the circuit court. This affidavit was uncontroverted and comports with the pleadings submitted by plaintiff before the district court. Consequently, based on the record evidence, we conclude that the issue of an alleged misrepresentation was actually litigated before the district court.

Because each of the claims brought by plaintiff in the present case were actually litigated before the district court, res judicata applies to those claims. *Sewell, supra* at 577. Therefore, the trial court did not err when it granted summary disposition to defendant under MCR 2.116(C)(7).

III. Judicial Abuses

Plaintiff next contends that he was deprived of due process through various actions taken by the trial court. Specifically, plaintiff claims that the trial court abused its discretion when it (1) dismissed the case for failing to appear at the pretrial conference, (2) sua sponte cancelled the good cause hearing originally scheduled for September 7, 2005, (3) refused to adjourn the hearing scheduled for October 5, 2005, (4) refused to consider the affidavit proffered by plaintiff in substitution for the testimony of his missing witness, and (5) refused to consider plaintiff's response to defendant's motion for summary disposition.⁵ We disagree with each contention.

Pursuant to MCR 2.401(G)(1), the failure of a party or a party's attorney to attend a pretrial conference may constitute a default to which MCR 2.603 is applicable or a ground for dismissal under MCR 2.504(B). This Court reviews a trial court's determination that dismissal is appropriate under MCR 2.401(G)(1) for an abuse of discretion. *Schell v Baker Furniture Co*, 232 Mich App 470, 474; 591 NW2d 349 (1998). An abuse of discretion is found when an

⁵ Plaintiff also claims that the trial court abused its discretion when it imposed sanctions against him and his counsel and when it granted summary disposition in favor of defendant. However, because we address these issues in sections IV and II respectively, we decline to address them here.

unprejudiced person, considering the facts on which the trial court relied, would find no justification or excuse for the ruling made. *Michigan Citizens for Water Conservation v Nestlé Waters North America, Inc*, 269 Mich App 25, 41; 709 NW2d 174 (2005). However, dismissal is a drastic step, which should be taken cautiously. *Vicencio v Ramirez*, 211 Mich App 501, 506; 536 NW2d 280 (1995).

On August 29, 2005, after plaintiff's counsel failed to show for the scheduled pretrial conference, the trial court dismissed plaintiff's case. On the record, the trial court found that plaintiff's counsel had developed a pattern of disregarding the court's scheduling orders. The trial court also stated that it had reviewed defendant's motion for summary disposition and concluded that dismissal on the merits would not be improper. Finally, the trial court stated that there was at the least culpable negligence on the part of plaintiff's counsel in failing to appear. For these reasons, the trial court concluded that dismissal for failing to appear was warranted.

Under the facts of this case, we conclude that the trial court did not abuse its discretion when it dismissed plaintiff's case for failing to appear. Plaintiff's counsel had already missed two deadlines set by the court, including one that was ordered pursuant to a stipulation to which plaintiff had assented. In addition, the trial court noted that plaintiff's case appeared ripe for dismissal on the merits and found that plaintiff's failure to appear was the result of culpable negligence. Hence, the trial court had sufficient justification for determining that plaintiff's failure to appear warranted the sanction of dismissal. *Schell, supra* at 474.

In addition, although the trial court was within its discretion when it ordered dismissal of plaintiff's case, the trial court later granted plaintiff's motion for reinstatement. Nevertheless, the entry of dismissal terminated the proceedings then pending including the good cause hearing scheduled for September 7, 2005. See *Northrup v Jay*, 262 Mich 463, 464; 247 NW 717 (1933) (noting that dismissal of the case terminates all proceedings). Therefore, plaintiff's contention that the trial court abused its discretion by sua sponte canceling the good cause hearing scheduled for September 7 is without merit.⁶

Plaintiff's argument that the trial court abused its discretion when it refused to adjourn the October 5, 2005, good cause hearing is also without merit. Whether a hearing should be adjourned is committed to the sound discretion of the trial court. MCR 2.503(D)(1). A motion for adjournment must be based on good cause. MCR 2.503(B)(1); *People v Jackson*, 467 Mich 272, 276; 650 NW2d 665 (2002). Furthermore, pursuant to MCR 2.503(C)(2), where the motion for adjournment is based on the unavailability of a witness, the court may grant the adjournment only if the court finds that (1) the evidence is material and (2) that diligent efforts have been made to produce the witness or evidence. Hence, the movant must demonstrate both good cause and diligence. *People v Coy*, 258 Mich App 1, 18; 669 NW2d 831 (2003).

⁶ Even if this hearing were not automatically canceled by the entry of dismissal, plaintiff moved for reinstatement on September 1, 2005 and did not have his case reinstated until September 16, 2005. Consequently, the trial court had no choice but to reschedule the good cause hearing.

Plaintiff moved for an adjournment shortly after learning that the good cause hearing was scheduled for October 5, 2005. In the motion, plaintiff stated that he could not proceed on that date because his key witness would be unavailable due to a previously scheduled trial. On October 3, 2005 the trial court issued an order denying plaintiff's motion. In the order, the trial court indicated that the motion was denied because the reasons proffered by plaintiff in support of its motion did not constitute good cause for an adjournment. The court further noted that plaintiff continually failed to communicate with his witness and ignored the court's scheduling orders and that these failures were not the equivalent of good cause.

In addition, at the good cause hearing, the trial court reiterated that the denial of the motion to adjourn was properly granted. The trial court explained that plaintiff had already had the hearing adjourned once before and that the subsequent date had to be rescheduled because plaintiff's counsel failed to show for the pretrial conference. The court also noted that the plaintiff's counsel had misstated that the witness was unavailable because of a previously set trial date when in fact the witness was at a charity function. For these reasons, the trial court concluded that it was appropriate to proceed with the hearing.

The trial court correctly concluded that plaintiff had not exercised diligence in obtaining the presence of the witness. Likewise, the trial court properly determined that plaintiff had not met its burden of showing good cause for adjourning the hearing. Plaintiff's counsel's own actions necessitated adjournment of the hearing twice before and led to the scheduling conflict with his witness. Hence, the trial court did not abuse its discretion when it refused to adjourn the hearing again.

Next, plaintiff contends that the trial court should have considered the affidavit of his missing witness when determining whether plaintiff had demonstrated good cause. We disagree.

This Court reviews a trial court's decision to admit or exclude evidence for an abuse of discretion. *Craig v Oakwood Hosp*, 471 Mich 67, 76; 684 NW2d 296 (2004). A trial court necessarily abuses its discretion when it admits evidence that is inadmissible as a matter of law. *Id.* "However, any error in the admission or exclusion of evidence will not warrant appellate relief 'unless refusal to take this action appears . . . inconsistent with substantial justice,' or affects 'a substantial right of the [opposing] party.'" *Id.*, quoting MCR 2.613(A) and MRE 103(a).

At the good cause hearing, plaintiff offered the affidavit of his missing witness in lieu of his appearance at the hearing. In the affidavit, the witness summarized statements allegedly made to him by plaintiff's counsel and concluded that defendant's counsel misled plaintiff's counsel. The trial court correctly determined that these statements were inadmissible hearsay. See MRE 801 and 802. Furthermore, the only statements that were not hearsay were not relevant to determining whether defendant's counsel had actually misled plaintiff's counsel. Therefore, the trial court did not err when it refused to consider this affidavit. Furthermore, the trial court made it clear that, even if it had considered the affidavit, it would have resolved all conflicts between the affidavit and defendant's counsel's testimony in favor of defendant. Hence, plaintiff cannot demonstrate prejudice as a result of the trial court's failure to consider the affidavit. *Craig, supra* at 76. Consequently, even if the trial court erred when it refused to consider the affidavit, that error would not warrant reversal.

Finally, plaintiff argues that the trial court abused its discretion when it refused to consider plaintiff's response to defendant's motion for summary disposition. Again, we disagree.

Pursuant to MCR 2.119(C) and MCR 2.401(B)(2), the trial court has the authority to establish deadlines for the submission of motions and responsive pleadings. Likewise, it is within the trial court's discretion to decline to consider motions or pleadings submitted after the established deadline. See *Kemerko Clawson, LLC v RxIV*, 269 Mich App 347, 349; 711 NW2d 801 (2005).

Defendant filed his motion for summary disposition on March 18, 2005 and on March 25, 2005, the trial court issued an order requiring plaintiff to respond by June 8, 2005. Hence, plaintiff had over two months to prepare and file his response. Nevertheless, plaintiff was unable to meet the deadline and, as a result, was forced to ask defendant for an extension. Defendant agreed to stipulate to an extension to June 20, 2005 and, on June 13, the trial court issued an order extending the deadline accordingly. Despite this extension, plaintiff failed to submit his response until June 29, 2005. Thereafter, the trial court indicated that it would not consider the response unless plaintiff could establish good cause for a further extension. Plaintiff responded by claiming that he would not have missed the deadline had it not been for the deceptive practices of defendant's counsel. However, the trial court found plaintiff's claims to be unfounded and, therefore, declined to further extend the deadline. Consequently, the trial court refused to consider the response as untimely filed.

On this record, we cannot conclude that the trial court abused its discretion. The trial court's original scheduling order gave plaintiff adequate time to prepare a response to defendant's motion for summary disposition. In addition, the trial court agreed to one extension of the deadline and gave plaintiff an opportunity to obtain a further extension by demonstrating good cause. The trial court only refused to consider plaintiff's response after plaintiff missed two deadlines and failed to demonstrate that he had good cause for a further extension. Hence, the trial court's decision was not without justification or excuse.

There were no errors warranting reversal.

IV. Sanctions

For his last argument, plaintiff contends that the trial court abused its discretion when it sanctioned plaintiff and his counsel by awarding defendant \$5,600 in attorney fees. We disagree.

Pursuant to MCR 2.114(A) and (C), all documents, including pleadings and motions, must be signed either by the party filing the document, if not represented by an attorney, or, if represented, by at least one attorney of record. By signing the document, the attorney or party certifies that,

(1) he or she has read the document;

(2) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and is warranted by

existing law or a good-faith argument for the extension, modification, or reversal of existing law; and

(3) the document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. [MCR 2.114(D).]

Furthermore,

If a document is signed in violation of this rule, the court, on the motion of a party or on its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including reasonable attorney fees. The court may not assess punitive damages. [MCR 2.114(E).]

In order to impose sanctions under MCR 2.114(E), a trial court must first find that an attorney or party signed a document in violation of MCR 2.114(A)-(D). *In re Stafford*, 200 Mich App 41, 42; 503 NW2d 678 (1993). However, once it makes such a finding, the trial court must impose sanctions. *In re Forfeiture of Cash and Gambling Paraphernalia*, 203 Mich App 69, 73; 512 NW2d 49 (1993). Because the imposition of sanctions is committed to the discretion of the trial court, this Court's review is limited to determining whether the trial court's findings were clearly erroneous. *Contel Systems Corp v Gores*, 183 Mich App 706, 711; 455 NW2d 398 (1990). A finding is clearly erroneous when, after reviewing the entire record, this Court is left with a definite and firm conviction that a mistake has been made. *Nestlé, supra* at 40. "The clear error standard is highly deferential to the trial court and requires that regard be given to the trial court's special opportunity to judge credibility." *Id.* at 41.

As noted above, plaintiff failed to file his response to defendant's motion for summary disposition before either the June 8, 2005 deadline originally set by the trial court or the stipulated June 20, 2005 deadline. On June 29, 2005, plaintiff filed a motion for an extension to file a response. In that motion and the accompanying pleadings, plaintiff claimed that defendant's trial counsel engaged in deliberate misconduct in order to cause plaintiff's counsel to miss the deadlines. Plaintiff further argued that this misconduct constituted good cause for extending the deadline.

A hearing was held on October 5, 2005, to determine whether plaintiff had demonstrated good cause for an extension. Other than plaintiff's trial counsel's assertions, plaintiff presented no substantive evidence that defendant's counsel actually engaged in misconduct. Indeed, plaintiff's counsel refused to testify concerning the allegedly deceptive conduct when given the opportunity by the trial court. In contrast, defendant's counsel testified concerning the events leading up to the stipulation and stated that he did not lead plaintiff's counsel to believe that he could ignore the June 20, 2005 deadline.

On October 6, 2005, the trial court issued a written opinion and order wherein it found that plaintiff's trial counsel had not engaged in any conduct, which either deliberately or innocently misled plaintiff's counsel. Indeed, the court stated that, "[t]o the contrary, [plaintiff's counsel] has fabricated specious and baseless claims of attorney misconduct as a thinly veiled

attempt to disguise his own failure to follow the clear scheduling orders of this Court.” Based on this finding, the trial court determined that plaintiff failed to establish good cause for extending the deadline for the response. Furthermore, the trial court found that plaintiff’s counsel blatantly violated MCR 2.114(D) by making unfounded accusations against defendant’s trial counsel. Therefore, pursuant to MCR 2.114(E), the trial court ordered plaintiff and his counsel, jointly and severally, to reimburse defendant the \$5,600 in attorney fees he incurred in defending against the motion.

Plaintiff’s failure to present any evidence concerning the allegedly deceptive conduct is evidence that the accusations were not well grounded in fact as required by MCR 2.114(D)(2). In addition, the trial court indicated that it found defendant’s trial counsel’s testimony that he did not mislead plaintiff’s counsel to be highly credible. This testimony, the lack of evidence proffered by plaintiff, and the documentary evidence submitted with the various pleadings support the trial court’s conclusion that plaintiff’s trial counsel made the accusations in order to fabricate good cause where none existed. Hence, the trial court’s finding that plaintiff’s trial counsel signed the motion in violation of MCR 2.114(D) was not clearly erroneous. Consequently, the imposition of sanctions was appropriate.

Plaintiff also contends that the amount of attorney fees awarded is excessive and warrants reversal. We disagree.

This Court reviews a trial court’s determination of the amount of sanctions imposed under MCR 2.114(E) for an abuse of discretion. *Maryland Casualty Co v Allen*, 221 Mich App 26, 32; 561 NW2d 103 (1997). Pursuant to MCR 2.114(E), the trial court shall order an appropriate sanction on the party who signed a document in violation of MCR 2.114(A)-(D). The sanction “may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including reasonable attorney fees.” MCR 2.114(E). At the October 5 hearing, defendant’s counsel testified that his client incurred \$5,600 in attorney fees defending against plaintiff’s motion for an extension. Plaintiff failed to present any evidence that this amount was excessive or inaccurate. Therefore, the trial court did not abuse its discretion when it relied on this testimony.

Finally, relying on *Cohen v Cohen*, 125 Mich App 206; 335 NW2d 661 (1983) and *Minor v Michigan Educ Ass’n*, 127 Mich App 196; 338 NW2d 913 (1983), plaintiff contends that the trial court may not impose sanctions where the case has been dismissed prior to trial. Plaintiff’s reliance on *Cohen* and *Minor* is misplaced. Both *Cohen* and *Minor* dealt with the imposition of sanctions under GCR 1963, 111.6, which permitted the trial court to award expenses incurred in proving or disproving facts *at trial* that were unreasonably denied or alleged in the opposing party’s pleadings. In contrast, MCR 2.114(E) contains no such limitation, but rather specifically authorizes the award of reasonable attorney fees occasioned by violations of MCR 2.114(A)-(D). Therefore, plaintiff’s argument is without merit.

V. Conclusion

The trial court properly granted summary disposition in favor of defendant. In addition, the trial court did not deprive defendant of due process when it enforced its scheduling order and otherwise exercised its discretion to control the progression of the suit. Finally, the trial court

did not clearly err when it determined that plaintiff's trial counsel signed the motion for extension in violation of MCR 2.114(D). Therefore, there were no errors warranting reversal.

Affirmed.

/s/ Michael R. Smolenski

/s/ Joel P. Hoekstra

/s/ Christopher M. Murray